



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
701 S. COURTHOUSE ROAD, SUITE 1001
ARLINGTON, VA 22204-2490

██████████
Docket No. 4416-23
Ref: Signature Date

From: Chairman, Board for Correction of Naval Records
To: Secretary of the Navy

Subj: REVIEW OF NAVAL RECORD OF FORMER MEMBER ██████████
██████████ USMC

Ref: (a) 10 U.S.C. § 1552
(b) USD (P&R) Memo, "Guidance to Military Discharge Review Boards and Boards for Correction of Military / Naval Records Regarding Equity, Injustice, or Clemency Determinations," 25 July 2018

Encl: (1) DD Form 149 w/enclosure
(2) DD Form 214MC (19750828 – 19780827)
(3) DD Form 4, Enlistment/Reenlistment Document – Armed Forces of the United States, 13 June 1979
(4) DD Form 214 (19790613 – 19821030)
(5) NAVMC 10132, Unit Punishment Book, 9 December 1983
(6) Statement of [Petitioner] (in response to Enclosure (5))
(7) Petitioner's FITREP (19830806 – 19840331)
(8) Petitioner's FITREP (19840718 – 19840930)
(9) CMC Memo 6100 MMCE-2, subj: Professional Standards, 17 December 1984
(10) HQ Co, HQSVC Bn, Marine Corps Recruit Depot ██████████ CO Memo 1330 HQOD, subj: Professional Standards Regarding [Petitioner], 1 February 1985
(11) Petitioner's FITREP (19850401 – 19850615)
(12) Petitioner's FITREP Rebuttal (19850401 – 19850615)
(13) Petitioner's FITREP, Reviewing Officers' Statement (19850401 – 19850615)
(14) Petitioner's FITREP (19850619 – 19850930)
(15) Department of Veterans Affairs Request for Information, 12 November 2010

1. Pursuant to the provisions of reference (a), Subject, hereinafter referred to as Petitioner, filed enclosure (1) with the Board for Correction of Naval Records, hereinafter referred to as the Board, requesting a discharge upgrade.¹

2. The Board considered Petitioner's allegations of error or injustice on 30 August 2023 and, pursuant to its governing policies and procedures, determined that the equitable relief indicated below is warranted in the interests of justice. Documentary material considered by the Board included the enclosures; relevant portions of Petitioner's naval record; and applicable statutes, regulations, and policies, to include reference (b).

¹ Petitioner did not specify how he desired his discharge to be upgraded.

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3. Having reviewed all of the evidence of record pertaining to Petitioner's allegations of error or injustice, the Board found as follows:

a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy.

b. Although enclosure (1) was not filed in a timely manner, it is in the interests of justice to waive the statute of limitation and consider Petitioner's application on its merits.

c. Petitioner initially enlisted in the Marine Corps and began a period of active duty service on 28 August 1975. He was honorably discharged upon the expiration of his enlistment on 27 August 1978. See enclosure (2).

d. Petitioner reenlisted in the Marine Corps and began a second period of active duty service on 13 June 1979. On 30 October 1982, he was honorably discharged upon the expiration of this enlistment.² See enclosures (3) and (4).

e. On 31 October 1982, Petitioner reenlisted in the Marine Corps for a four-year period. This action extended Petitioner's obligated service until October 1986. See enclosure (5).

e. On 9 December 1983, Petitioner received nonjudicial punishment (NJP) for failing to go at the time prescribed to morning formation on 30 November 1983.³ He was required to forfeit \$234 pay per month for one month, but that punishment was suspended for one month. See enclosure (5).

f. On 8 May 1984, Petitioner received a fitness report (FITREP) for the reporting period from 6 August 1983 to 31 March 1984 which recorded the fact that he was relieved as chief cook for a time and assigned as chief messman for 30 days until his job performance and attitude improved.⁴ See enclosure (7).

g. On 12 October 1984, Petitioner received a FITREP for the reporting period 18 July 1984 to 30 September 1984 which indicated that he was then assigned to the weight control program.⁵ See enclosure (8).

h. By memorandum dated 17 December 1984, the Commandant of the Marine Corps (CMC) informed Petitioner that a review of his official record reflected that he had not maintained the high standards expected of a Marine Corps noncommissioned officer. Specific reference was

² Petitioner had voluntarily extended his three-year enlistment for a short period in June 1981.

³ Petitioner subsequently provided a statement in response to the NJP stating that he hadn't attended a morning formation in about two months due to his job and because he had been attending the noncommissioned officer school for a month. On the morning in question, he stated that he was in the process of moving into base housing, and his normal duty hours were from 0900 to 1730. He was surprised to arrive at his normal reporting time to find a charge sheet pending against him. See enclosure (6).

⁴ This FITREP also mentioned the NJP referenced in paragraph 3e above, and commented that the punishment was awarded only "after numerous counseling sessions by his NCOIC and OIC." This statement tends to counter Petitioner's expression of surprise referenced in footnote 2.

⁵ This was a generally favorable FITREP, and indicated that Petitioner had shown improvement in weight reduction.

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made to the FITREPs referenced in paragraphs 3f and 3g above. He was advised to “make a determined effort to improve [his] performance and conduct,” and informed that the memorandum would be filed in his permanent record. See enclosure (9).

i. By memorandum dated 1 February 1985, Petitioner’s commander informed the CMC that Petitioner had failed the run portion of the physical fitness test (PFT) in August 1984 and was placed on the remedial physical fitness training program, in addition to his placement on the weight control program. However, he further informed the CMC that Petitioner passed the PFT and was within the weight standards within two weeks of being assigned to these programs. The letter also reported that Petitioner scored 152 points on the PFT on 7 December 1984. See enclosure (10).

j. On 18 June 1985, Petitioner received a FITREP for the reporting period 1 April 1985 to 15 June 1985 which reported that he had been returned to the weight control program during the reporting period, and demonstrated poor judgment and leadership by drinking with his subordinates. Petitioner was not recommended for promotion in this FITREP. See enclosure (11).

k. On 26 June 1985, Petitioner provided a statement in rebuttal to the FITREP referenced in paragraph 3j above, in which he described the FITREP as unjust. He denied being placed “back on the weight control program” during the rating period as reported, as in fact he had never actually been in the weight control program until 5 June 1985.⁶ With regard to the comment about Petitioner’s poor judgment and leadership, Petitioner claimed to have been in a particular location at [REDACTED] with two other noncommissioned officers when an accident occurred involving a junior enlisted Marines. He stated that he was not involved with the accident, but was witnessed at the site and his name was submitted for charges. Finally, Petitioner noted that, despite the average to below-average ratings assigned by his rater, the FITREP reflected that Petitioner was the top sergeant in his section relative to his peers. See enclosure (12).

l. On 26 June 1985, a reviewing officer reviewed the FITREP referenced in paragraph 3j above and Petitioner’s rebuttal to it reference in paragraph 3k, and concurred with the marks assigned by the reporting senior. He noted that since Petitioner was assigned to the weight control program on 5 June 1985, he was, in fact, assigned to the program during the rating period. He also stated that no charges had been filed against Petitioner, nor would any be filed, concerning the incident referenced by Petitioner in paragraph 3k above, but commented that Petitioner was drinking with two junior Marines on the afternoon in question, and that those to junior Marines were involved in a one-vehicle accident on the way home and cited for driving while intoxicated. Finally, the reviewing officer noted that, in fact, all four of Petitioner’s peers were rated above him. See enclosure (13).

m. On 30 September 1985, Petitioner received a FITREP for the reporting period 19 June 1985 to 30 September 1985 which stated that he presents a less than exemplary appearance in uniform and was participating in the weight control program at the time. See enclosure (14).

⁶ Petitioner had apparently not objected to the statement that he was placed on the weight control program when it appeared on the FITREP he received on 12 October 1984.

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n. On 11 April 1986, Petitioner was allegedly discharged from the Marine Corps under other than honorable (OTH) conditions.⁷ See enclosures (1) and (15).

o. Petitioner cites several career accomplishments in support of his application. Specifically, he notes that he completed his first two enlistments honorably; that he was the Chief Cook for four years at [REDACTED] from 1983 to 1986, during which period his mess hall won the Mess Hall of the Quarter for [REDACTED] five separate times; and that he was rated as an expert marksman on the M-16 rifle. See enclosure (1).

MAJORITY CONCLUSION:

Upon careful review and consideration of all of the evidence of record, the Majority of the Board determined that equitable relief is warranted in the interests of justice.

The Majority found no error or injustice in Petitioner's discharge under OTH conditions at the time that it was administered. In the absence of evidence to the contrary, the Board relies upon the presumption of regularity to establish that naval officials properly performed their duties. In this case, that presumption establishes that Petitioner was properly discharged under OTH conditions for misconduct which warranted such a characterization of service. Petitioner has provided no evidence to overcome this presumption.

In addition to considering the circumstances of Petitioner's discharge at the time that it was administered, the Majority also considered the totality of the circumstances to determine whether equitable relief is warranted in the interests of justice in accordance with reference (b). In this regard, the Board considered, among other factors, the entirety of Petitioner's naval record, which included the of two previous enlistments with honorable discharges; the numerous commendations and meritorious recognitions recorded in Petitioner's naval record and reported by him in his application; the absence of any significant misconduct in Petitioner's naval record; and the passage of time since Petitioner's discharge. The Majority determined that these mitigating factors were of sufficient weight to justify an equitable upgrade to his discharge characterization to general (under honorable conditions) in the interests of justice. Additionally, absent evidence establishing the reason for Petitioner's discharge, the Majority believed it appropriate to assign his narrative reason for separation as being pursuant to the Secretary of the Navy's Plenary Authority.

The Majority considered whether an upgrade of Petitioner's characterization of service to fully honorable is warrant, but determined that a general (under honorable conditions) characterization of service was appropriate under the totality of the circumstances. Petitioner's record during his final period included multiple adverse FITREPs, repeated and extended failures to abide by the Marine Corps' weight control standards, and an admonition from the CMC regarding his failure

⁷ Petitioner's naval record is incomplete in that it includes no documentation pertaining to his final discharge from the Marine Corps, to include his DD Form 214. The only evidence of his discharge on this date and with this characterization is a Department of Veterans Affairs Request for Information form submitted in November 2010 requesting copies of any separation documents (see enclosure (15)), and Petitioner's own statement that he was issued a "less than honorable" discharge in April 1986 (see enclosure (1)). In the absence of more reliable evidence, the Board proceeded on the presumption that this information was accurate. However, any subsequent determination that this presumption was erroneous would render the Board's decision herein null and void.

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to maintain the standards expected of Marine Corps noncommissioned officers. Accordingly, it appears unlikely that Petitioner's performance would have met the minimum standard to characterize this period of his service as honorable.

MAJORITY RECOMMENDATION:

In view of the above, the Majority of the Board recommends that the following corrective action be taken on Petitioner's naval record in the interests of justice:

That Petitioner be issued a DD Form 214 reflecting that his period of active service starting on 1 November 1982 and ending on 11 April 1986 was characterized as "General (under honorable conditions)"; that the narrative reason for his separation was "Secretary of the Navy Plenary Authority"; that his separation authority was "MARCORSEPMAN Par. 6214"; that his SPD code was "JFF1"; and that his reentry code was "RE-4."⁸ As Petitioner's naval record does not contain a record of his DD Form 214, the remaining entries on are to be filled in as they would have appeared at the time of his discharge on 11 April 1986.

That a copy of this record of proceedings be filed in Petitioner's naval record.

That no further corrective action be taken on Petitioner's naval record.

MINORITY CONCLUSION:

Upon careful review and consideration of all of the evidence of record, the Minority of the Board found insufficient evidence of any error or injustice warranting relief.

The Minority concurred with the Majority conclusion that there was no error or injustice in Petitioner's discharge under OTH conditions at the time that it was administered.

Like the Majority, the Minority also considered the totality of the circumstances to determine whether equitable relief is warranted in the interests of justice in accordance with reference (b). In this regard, the Minority considered the same potentially mitigating factors as did the Majority, but reached a different conclusion. Specifically, the Minority found that it simply did not have sufficient evidence upon which to make an informed decision regarding whether equitable relief is warranted in the interests of justice. Without knowing the nature of the misconduct which resulted in Petitioner's discharge under OTH conditions, the Minority was unable to determine whether the mitigating factors were of sufficient weight to justify recharacterizing Petitioner's discharge. It is Petitioner's burden to prove that the relief requested is warranted in the interests of justice, and he did not provide sufficient evidence to meet that burden. Additionally, the Minority noted that Petitioner provided no evidence or description of his post-service activities, accomplishments, or contributions to his community which might otherwise warrant equitable relief. As there was no error or injustice in Petitioner's discharge under OTH conditions at the time that it was administered, it is Petitioner's burden to prove that

⁸ If Petitioner's DD Form 214 happens to be discovered in the process of correcting his records and proves that the presumptions referenced in footnote 7 are inaccurate, then this recommendation is null and void, and no corrective action is to be taken upon Petitioner's naval record until the Board had the opportunity to review that record.

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his post-service accomplishments and contributions are of such merit to warrant a correction to his naval record to characterize his service more favorably than it was actually viewed at the time. As he failed to meet this burden, the Minority simply found an insufficient basis to justify any equitable relief.

MINORITY RECOMMENDATION:

In view of the above, the Minority of the Board recommends that no corrective action be taken on Petitioner's naval record.

4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above titled matter.
5. The foregoing action of the Board is submitted for your review and action.

10/23/2023



ASSISTANT GENERAL COUNSEL (MANPOWER AND RESERVE AFFAIRS) DECISION:

MAJORITY Recommendation Approved (Grant Relief – I concur with the Majority conclusion and therefore direct the relief recommended by the Majority above.)

MINORITY Recommendation Approved (Deny Relief – I concur with the Minority conclusion and therefore direct that no corrective action be taken on Petitioner's naval record.)

10/27/2023

